THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No :4294 of 2007

DATED:05-03-2007

BETWEEN:

B.K.Sharma Cloth Merchant,
Rep., by its Proprietor,
Business at 21-2-527,
Charkaman,
Hyderabad.

.....
PETITIONER

AND

The Commissioner,
Municipal Corporation of Hyderabad,
Office at Tank Bund,
Hyderabad & 2 others.

.....RESPONDENTS

ORDER:

Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents.

2. Petitioner seeks a writ of mandamus declaring the proposed action of the respondents 1 and 2 to demolish the premises under the occupation of the petitioner forming part of Municipal No.21-2-527, situated at Charkaman, Hyderabad, in collusion with the 3rd respondent without notice to the petitioner, as illegal and arbitrary.

3. It is the case of the petitioner that he is the tenant in respect of the premises bearing No.21-2-527 situated at Charkaman, Hyderabad and he has been paying the rents regularly to the landlord-3rd respondent. Whileso,
respondents 1 and 2 have taken up the road widening programme to widen the road leading from Gulzar house to Motigalli, and at the consent of the 3rd respondent the respondents 1 and 2 are acquiring the said property for the purpose of road widening without issuing notice to the petitioner which results in eviction of the said premises in the course of demolition of the said premises for the purpose of widening of the road. It is stated that even the tenant is also entitled for notice of acquisition proceedings of road

widening either under section 146 or by way of compulsory acquisition under Section 147 of the Hyderabad Municipal Corporation Act, 1955 (for brevity, 'the Act') in the absence of any agreement.

4. It is further stated that a Division Bench of this Court in ***USHODAYA PUBLICATIONS, EENADU COMPLEX v. COMMISSIONER, MUNICIPAL CORPORATILON OF HYDERABAD AND ANOTHER***[1] held at paragraph No.10 as follows:

> *"the 1st respondent is a statutory authority. Its right to take possession of the land, therefore, must be exercised within the four corners of the statute. It is one thing to say that the provisions laid down under the said Act for acquiring the land are not required to be taken recourse to as the owner thereof has granted consent but the same would not mean that the lessee's consent need not be taken. There cannot be any doubt whatsoever that the said consent granted by the owner would not be binding upon the lessee and in that view of the matter the 1st respondent had no right to take forcible possession of the land in question, relying on the purported consent obtained by it from the petitioner's lessor without taking recourse to the provisions of the Land Acquisition Act as thereby the petitioner shall be deprived of its own valuable right".*

5. Having regard to the facts and circumstances of the case, the Writ Petition is disposed of directing the respondents 1 and 2 to issue notice to the petitioner/tenant in respect of the acquisition

proceedings for acquiring the said property of the petitioner either under Section 146 or under Section 147 of the Act. No order as to costs.

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V.ESWARAIAH,J

05th March, 2007.

Note:

Issue operative portion of the order
By wire at party's costs.

B/o

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[1] 2001(2) ALT 662 (F.B.)